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14 **IN THE UNITED STATES DISTRICT COURT**
15 **FOR THE DISTRICT OF NEVADA**

16 BRUCE WOLF, as Litigation Guardian
17 Ad Litem for C.A.R., D.O.B.:
18 1/19/2002, C.J.R., D.O.B.: 1/17/2005
19 and G.Y.R., D.O.B: 10/7/2006

20 Plaintiffs,

21 v.

22 CLARK COUNTY, THE STATE OF
23 NEVADA DEPARTMENT OF
HEALTH AND HUMAN SERVICES,
NEVADA DIVISION OF CHILDREN
AND FAMILY SERVICES AND
JOHN AND JANE DOE 1-10.

Defendants.

No. 2:17-cv-02084-JCM-NJK

AMENDED STIPULATION AND
~~[PROPOSED]~~ PROTECTIVE ORDER

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STIPULATION AND [PROPOSED]
PROTECTIVE ORDER - 1

Law Offices of Ressler & Tesh
Penthouse Suite
821 Second Avenue
Seattle, WA 98104
(206) 388-0333

1 1. Plaintiffs and Defendants, through their respective counsel and
2 subject to the Court's approval, hereby stipulate and agree as follows, pursuant to
3 Fed. R. Civ. P. 26(c), with respect to the disclosure of Confidential Information.
4

5 2. The parties to this action submit this Stipulation and Protective Order
6 (hereinafter "Order") solely for the purpose of facilitating the exchange of
7 documents and information between the parties in this action without involving
8 the Court unnecessarily in the process. Nothing in this Order nor the production of
9 any information or documents under the terms of this Order nor any proceedings
10 pursuant to this Order shall be deemed to have the effect of an admission or
11 waiver by any party or of altering the confidentiality or non-confidentiality of any
12 such document or information or altering any existing obligation of any party or
13 absence thereof.
14

15
16 **PROCEDURES REGARDING CONFIDENTIAL INFORMATION**

17 3. The parties define "Nevada, Oregon, and Washington case records" as
18 all documents, which are in the custody of Plaintiffs or any other documents
19 obtained by any party in this action from Nevada Department of Health and
20 Human Services ("Nevada DHHS"), Oregon Department of Human Services
21 ("Oregon DHS), or Washington Department of Social and Human Services
22 ("Washington DSHS") relating to Nevada DHHS, Oregon DHS, and Washington
23

1 DSHS investigations, custody, and placement of Plaintiffs, including, but not
2 limited to, documents relating to all Plaintiffs' institutional, foster family, and kin
3 placements; foster family's licensing files; education, mental health, and health
4 services; and court proceedings. These "case records" shall also include the files
5 and documents of any child who has been or is in Nevada DHHS, Oregon DHS,
6 and Washington DSHS custody. The term "document" and "documents" include
7 any written, printed, typed, recorded, electronic or graphic material of every type
8 and description, and each and every thing from which information can be
9 processed or transcribed, including computer readable storage material.
10 Documents include, but are not limited to, the following: records, handwritten
11 notes, reports, agreements, memoranda, email communications and photographs.
12

13
14 4. The parties acknowledge that Nevada DHHS, Oregon DHS, and
15 Washington DSHS case records and the files and documents of any child who has
16 been or is in their custody contain sensitive information that is generally protected
17 from disclosure pursuant to federal and state law, including without limitation:
18

19 (a) Information that identifies by name or address, or could reasonably
20 lead to the disclosure of the name or address of any applicant for or recipient of
21 child welfare, foster care, or adoption assistance services [45 C.F.R. 1355.21];
22

23 (b) The names and addresses of applicants for and recipients of child

1 welfare, foster care, or adoption assistance services and the amounts of financial
2 assistance provided to them [45 C.F.R. 205.50];

3
4 (c) Information related to the social and economic conditions or
5 circumstances of particular individual applicants for or recipients of child welfare,
6 foster care, or adoption services [45 C.F.R. 205.50];

7
8 (d) Agency evaluations of information about particular individual
9 applicants for or recipients of child welfare, foster care, or adoption assistance
10 services [45 C.F.R. 205.50];

11
12 (e) Medical data concerning particular individual applicants for or
13 recipients of child welfare, foster care, or adoption assistance services [45 C.F.R.
14 205.50]; and

15
16 (f) All records of child abuse reports and all information obtained in
17 investigating reports of child abuse and neglect [45 C.F.R. 1340.14].

18
19 The parties also acknowledge that all files or documents of any child who
20 has been or is in Nevada DHHS, Oregon DHS, and Washington DSHS custody
21 shall come within the provisions and protections of this Order.

22
23 5. Nevada DHHS, Oregon DHS, and Washington DSHS case records
shall be deemed to be Confidential Information pursuant to this Order and

1 plaintiffs shall label them as Confidential upon production.

2
3 6. A party may also label as "Confidential" any discovery that is served
4 or produced in this litigation (including subpoenas and deposition testimony), if
5 the marking party believes that the information contained in such discovery
6 qualifies for protection under standards developed under Fed. R. Civ. P. 26(c) or
7 state or federal law, including the right to privacy. Such information shall be
8 deemed to be Confidential Information pursuant to this Order.

9
10 The fact that a document is stamped "Confidential" by one party shall not
11 be construed as an admission by any other party that such document is
12 confidential, nor shall it limit or preclude the right of any party to object to the
13 "Confidential" designation and to file any appropriate motion(s) to determine the
14 propriety of such designation. If the producing party inadvertently fails to stamp
15 or otherwise appropriately designate or list certain documents, material, or
16 information as "Confidential" upon their production or disclosure, such
17 inadvertent failure to designate shall not constitute nor be deemed a waiver of a
18 subsequent claim of protected treatment under this Order.

19
20 Any party may contest a designation of "Confidential" by serving a written
21 objection (by letter to the designating Party) to the Confidentiality designation at
22 any time up to the discovery cut-off including any continuance thereof. Upon
23

1 service of such objection, the Parties shall make a good faith effort to resolve the
2 issue informally. If that effort fails, the confidentiality designation shall expire
3 unless, within three weeks of service of the objection, or such additional time as
4 may be agreed upon the Parties, the Party seeking confidentiality applies to the
5 Court or Magistrate Judge for an order designating the document or information
6 confidential. If such an application is made, the document or other information
7 marked "Confidential" which is in dispute shall remain "Confidential," as the case
8 may be, until the dispute is resolved by and between or among the parties and so
9 confirmed in writing or, if necessary, until order of the Court or any Magistrate
10 Judge. On any such application, the proponent of confidentiality shall have the
11 burden of showing, by a preponderance of the evidence, good cause for the
12 claimed protection.
13
14

15 7. Confidential Information shall only be used for purpose of
16 prosecution, defense, or settlement of this action, and for no other purpose.
17

18 8. Confidential Information may be disclosed or made available only to
19 the Court; to counsel for a party (including paralegal, clerical, and secretarial staff
20 employed by such counsel), and to the "qualified persons" designated below:
21

22 (a) a party, or an officer, director, agent, or employee of a party deemed
23 necessary by counsel to aid in the prosecution, defense, or settlement of this

1 action;

2 (b) experts or consultants (and their clerical staff) consulted and/or
3 retained by such counsel to assist in the prosecution, defense, or settlement of this
4 action;
5

6 (c) court reporter(s) employed in this action; or

7 (d) a witness at any deposition or court proceeding in this action.

8 the Court and its staff,

9 9. Any person other than a party, counsel for a party, or a direct
10 employee of such counsel, having access to information pursuant to paragraph 8,
11 shall be provided a copy of this Order by the party providing access to the
12 information. Such persons shall be bound by this Order and shall not disclose the
13 information to any persons not authorized under state or federal law or order of
14 this Court to receive such information. Furthermore, any such person shall sign a
15 copy of the Statement of Confidentiality attached hereto and made a part hereof as
16 Exhibit A, prior to being furnished with any such information.
17

18 10. All documents meeting the definition of Confidential Information that
19 are produced in this case shall be clearly labeled or stamped "Confidential" prior
20 to production.
21

22 11. In connection with proceedings in this action, testimony taken at a
23

1 deposition, hearing, or trial relating to Confidential Information or disclosing the
2 identities of plaintiffs, any other child who has been or is in Nevada DHHS,
3 Oregon DHS, and Washington DSHS custody, or any individual not a named
4 party to this action, may be designated as Confidential Information by making a
5 statement to that effect on the record at the deposition or other proceeding.
6 Arrangements shall be made with the court reporter taking and transcribing such
7 proceeding to label confidential portions of the transcript as containing
8 Confidential Information.
9

10
11 12. Any party's inadvertent or unintentional failure to designate protected
12 information shall not be deemed a waiver in whole or in part of that party's claim
13 of confidentiality, as long as the disclosing party notifies all parties in writing that
14 such protected information constitutes confidential information within seven days
15 after learning that the protected information was inadvertently or unintentionally
16 produced without an appropriate confidentiality designation.
17

18 13. The terms of this Stipulated Protective Order apply, without limitation
19 to all documents and information exchanged between the parties in the course of
20 this litigation, whether or not such documents and/or information were exchanged
21 prior to the entry of this Order and/or were designated as "Confidential." This
22 provision allows a party to designate a previously produced document as
23

1 "Confidential."

2 14.

3
4 See order issued concurrently herewith.
5
6
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11 15. Hard copies shall be submitted to the parties in accordance with Local
12 Rule IA 10-5 and local e-filing instructions. Parties and nonparties shall also
13 comply with all requirements of Fed. R. Civ. P. 5.2 with regard to all documents
14 that are filed with the court.
15

16 16. In all documents that are made part of the public record (unless under
17 seal) and in all references in open court, when referring to individual children or
18 families, or other persons whose names or other identifying information is
19 contained in Nevada DHHD, Oregon DHS, and Washington DSHS case records,
20 the parties shall use initials agreed to by the parties.
21

22 17. This Order does not affect access to Confidential Information by
23

1 individuals, including employees of Nevada DHHS, Oregon DHS, Washington
2 DSHS, or Clark County who are otherwise authorized under state law or
3 regulation to have such access.
4

5 18. The parties acknowledge that Nevada DHHS, Oregon DHS, and
6 Washington DSHS information and material, which are the subject of this
7 Confidentiality Order, contain sensitive information that is generally protected
8 from disclosure by Nevada, Oregon, and Washington statutes and administrative
9 codes, and that all such information should be and hereby is deemed confidential
10 and may not be discussed with or disclosed, either orally or in writing, to anyone,
11 including but not limited to the news or publication media in any format, except in
12 the strict accordance with the provisions of this Confidentiality Order. This Order
13 does not apply to policies and procedures of Nevada DHHS, Oregon DHS, and
14 Washington DSHS which are otherwise deemed public record. This Order shall be
15 without prejudice to the right of the parties (i) to bring before the Court at any
16 time the question of whether any particular document or information is, in fact,
17 Confidential or whether its use should be restricted in any manner whatsoever; or
18 (ii) to present a motion to the Court for a separate protective order as to any
19 particular document or information, including restrictions differing from those
20 specified herein. This Order shall not be deemed to prejudice the parties in any
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STIPULATION AND [PROPOSED]
PROTECTIVE ORDER - 10

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1 way in any future application for modification of this Order.

2 19. This Order shall be without prejudice to any party to claim that a
3 document that a party marked as containing Confidential Information is also
4 protected by the attorney-client privilege, work product doctrine, or any other
5 privilege or limitation recognized under state or federal law. Determinations of
6 confidentiality and privilege are separate, and nothing in this Order constitutes a
7 waiver of privilege.
8

9 20. At the conclusion of this case, all discovery material made
10 confidential pursuant to this Order, or another court order, all documents
11 reflecting such material, and all copies thereof (including without limitation,
12 copies provided to testifying or consulting experts or consultants) shall be
13 returned to the person or party that produced the confidential material, or, in the
14 alternative, destroyed and certified in writing to the person or party that produced
15 the confidential material to have been destroyed. Notwithstanding the foregoing,
16 counsel for the parties may retain, until the expiration of the statute of limitations
17 applicable to attorney malpractice, including any period for which the statute may
18 be tolled, one copy of the named plaintiffs' case records, including the
19 confidential material contained therein, and one copy of any attorney work
20 product reflecting Confidential Information, provided that such case records and
21
22
23

1 attorney work product is prominently marked with the statement:
2
3

4 **CONFIDENTIAL**

5 **This envelope contains documents that are subject to a Protective**
6 **Order entered by the Court in this action governing the use of**
7 **confidential discovery material.**

8 or some substantially similar statement. The provisions of this Order shall
9 continue to apply to all confidential materials not returned or destroyed in
10 accordance with this paragraph. After the expiration of the statute of limitations
11 applicable to attorney malpractice, including any period for which the statute may
12 be tolled, plaintiffs' counsel shall return or destroy all confidential case records in
13 accordance with the terms of this paragraph.

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STIPULATION AND [PROPOSED]
PROTECTIVE ORDER - 12

Law Offices of Ressler & Tesh
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1 DATED this 29th day of January, 2018.

2 **RESSLER & TESH, PLLC**

3 

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Co-Counsel for Plaintiffs

9 **OLSON, CANNON, GORMLEY,**
10 **ANGULO & STOBERSKI**

11 /s/ Felicia Galati
12 Felicia Galati, Esq.
13 Nevada Bar No. 7341
14 9950 West Cheyenne Avenue
15 Las Vegas, Nevada 89129
16 Tel: 702.384.4012
17 fgalati@ocgas.com
18 Attorney for Defendant Clark County
19
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STIPULATION AND [PROPOSED]
PROTECTIVE ORDER - 13

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1 **ORDER**

2 IT IS HEREBY ORDERED, ADJUDGED and DECREED that,

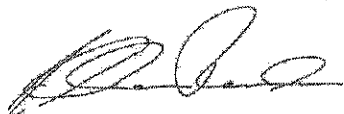
3 The records of the Clark County Department of Family Services
4 ("CCDFS"), which may be discoverable in Bruce Wolf et al. v. Clark County et
5 al., United States District Court Case No: 2:17-cv-02084-JCM-NJK, as well as
6 any other documents so marked by the Parties, are deemed confidential to this
7 litigation, and may be released and disclosed only in accordance with the terms
8 and provisions of the foregoing Stipulation, said terms and provisions being
9 incorporated into this Order by this reference as though fully set forth herein.
10

11 IT IS SO ORDERED this 31st day of January, 2018.

12
13 
UNITED STATES MAGISTRATE JUDGE

14 Submitted by:

15 **RESSLER & TESH, PLLC**

16 

17 Allen M. Ressler, WSBA No. 5330
18 Counsel for Plaintiffs

19 **JONES WILSON LLP**

20 /s/ Justin L. Wilson
21 Justin L. Wilson, Esq.
22 Nevada Bar No. 7560
23 Co-Counsel for Plaintiffs

STIPULATION AND [PROPOSED]
PROTECTIVE ORDER - 14

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1 **Exhibit A**

2 **STATEMENT OF CONFIDENTIALITY**

3 By signing this document, I hereby certify that I have read the
4 Confidentiality Order entered by the Court in *Bruce Wolf et al v. Clark County et*
5 *al*, USDC Case No. 2:17-cv-02084-JCM-NJK on _____, 201____. I
6 understand this Order and agree to abide by its terms by not disclosing
7 confidential information to anyone other than counsel, employees or clerical staff
8 subject to this order, except as required by lawful judicial process
9

10
11 _____
Signature

Date

12
13 _____
Print Name / Title

1 **ECF CERTIFICATION**

2 I, Khanh T. Tran, hereby certify that I have obtained concurrence regarding
3 the filing of this document from each of the signatories within the e-file document.
4

5 DATED this ____ day of November, 2017 at Seattle, Washington.

6 **RESSLER & TESH, PLLC**

7 _____
8 Khanh T. Tran | Paralegal
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